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EX PARTE OR LATE FILED

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October 3, 1996

VIA HAND DELIVERY

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

RE: CC Docket Nos. 94-54, 94-102, 95-116,
ET Docket No. 93-62
PR Docket Nos. 93-144, 89-552

EX PARTE FILING

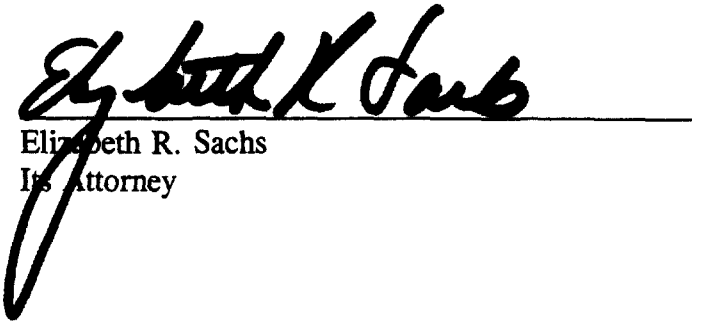
Dear Mr. Caton:

On behalf of the American Mobile Telecommunications Association, Inc. ("AMTA"), and in accordance with Section 1.1206(a)(2) of the Federal Communications Commission Rules and Regulations, we hereby notify the Commission that an oral ex parte presentation was made by AMTA to Suzanne Toller, Legal Advisor to Commissioner Chong on October 2, 1996. The presentation summarized AMTA's recommendations regarding a refinement of the "covered SMR provider" definition included in CC Docket Nos. 94-54, 94-102, 95-116 and ET Docket No. 93-62, as detailed in AMTA's previously filed Comments in those proceedings. AMTA's recommended definition of "covered SMR Providers" is attached hereto for the Commission's convenience.

AMTA also discussed matters relating to the 800 MHz and 220 MHz proceedings identified above, which positions also are detailed in AMTA's previously filed Comments in PR Docket Nos. 93-144 and 89-552, respectively. Specifically, AMTA urged the FCC to finalize final rules expeditiously in both proceedings, and to adopt the 800 MHz Consensus proposal described in the March 1, 1996 Joint Reply Comments of SMR WON, The American Mobile

Telecommunications Association and Nextel Communications, Inc. in PR Docket No. 93-144. A summary of that proposal is attached also.

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

By: 

Elizabeth R. Sachs
Its Attorney

Enclosures

PROPOSED DEFINITION FOR COVERED SMR SERVICES

Add new definition paragraph to § 20.3

Mobile Telephone Switching Facility. An electronic switching system that is used to terminate mobile stations for purposes of interconnection to each other and to trunks interfacing with the public switched network.

Modify definitions - §§20.3 and 20.12

Incumbent Wide Area SMR Licensees. Licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz service, either by waiver or under Section 90.629 of these rules, and who offer ~~real-time~~ two way interconnected voice service using a mobile telephone switching facility. ~~that is interconnected with the public switched network.~~

§ 20.12(a)

This Section is applicable only to providers of Broadband Personal Communications Services (Part 24, Subpart E of this chapter), providers of Cellular Radio Telephone Service (Part 22, Subpart H of this chapter), providers of Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands that hold geographic licenses (included in Part 90, Subpart S of this chapter) and who offer ~~real-time~~ two way interconnected voice service using a mobile telephone switching facility. ~~that is interconnected with the public switched network~~, and Incumbent Wide Area SMR Licensees.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 90 of the	)	
Commission's Rules to Facilitate	)	PR Docket No. 93-144
Future Development of SMR Systems	)	RM-8117, RM-8030
in the 800 MHz Frequency Band	)	RM-8029
	)	
Implementation of Sections 3(n)	)	
and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile	)	
Services	)	
	)	
Implementation of Section 309(j)	)	
of the Communications Act --	)	PP Docket No. 93-253
Competitive Bidding	)	

To: The Commission

JOINT REPLY COMMENTS OF SMR WON,
THE AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION
AND NEXTEL COMMUNICATIONS, INC.
ON THE SECOND FURTHER NOTICE OF PROPOSED RULE MAKING

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Dated: March 1, 1996

SUMMARY

In response to the Federal Communications Commission's (the "Commission") recent request for short, concise joint pleadings reflecting consensus positions among parties, SMR WON, the American Mobile Telecommunications Association ("AMTA"), and Nextel Communications, Inc. ("Nextel") (collectively, the "Coalition") respectfully submit these Joint Reply Comments concerning the licensing of Specialized Mobile Radio ("SMR") systems in PR Docket No. 93-144.

SMR Won is a trade association of small business 800 MHz SMR incumbents. AMTA is a trade association representing numerous SMR licensees -- both large and small. Nextel is the Nation's largest provider of both traditional and wide-area SMR services. Over the past nearly three years, each has participated extensively in rule makings implementing the regulatory parity provisions of the Omnibus Budget Reconciliation Act of 1993 ("OBRA 93").

OBRA 93 mandated that the Commission create a level regulatory playing field among all Commercial Mobile Radio Service ("CMRS") providers. This has required a comprehensive restructuring of SMR licensing rules, regulations and policies affecting the operations, interests and future business plans of all SMRs -- large and small, local and wide-area.

On December 15, 1995, the Commission adopted rules to license the top 200 SMR channels on a Economic Area ("EA") basis, using competitive bidding to select among mutually exclusive applicants coupled with mandatory relocation/retuning of incumbents to permit

EA licensees to obtain contiguous, exclusive use spectrum comparable to other CMRS licensees. At the same time, the Commission adopted a Second Further Notice of Proposed Rule Making (the "FNPRM") proposing EA licensing by competitive bidding for the lower 80 SMR channels and 150 former General Category channels reclassified prospectively for SMR-only use. These proceedings have been among the most contentious and fractious in the wireless communications industry.

The Coalition members have spent hundreds of hours identifying areas of consensus and resolving disagreements that appeared intractable only a few months ago. These Joint Reply Comments are the outcome of these efforts and are an enormous achievement. They build upon the licensing proposals in the FNPRM to resolve the transition from site-by-site to EA licensing on the lower channels -- taking into account differences between the uses and past licensing of this spectrum and the upper 200 channels. In combination with the underlying concepts of the rules already adopted for the upper 200 channels, the Coalition proposal balances the interests of new, emerging wide-area SMR operators with the needs of existing, traditional SMR operators.

Specifically, the Coalition supports the Commission's proposal to license the lower 230 channels on an EA basis using auctions to resolve mutually exclusive applications. Unlike the top 200 channels, however, the lower 150 channels are individually licensed, with some on a shared use basis. Moreover, the lower 80 SMR channels are interleaved with other allocations, making the

creation of large blocks of contiguous spectrum impossible. In addition, as the Commission tentatively concluded, there is no possibility of relocating incumbents from the lower channels to other comparable spectrum. Thus, EA licensing on the lower channels must enable incumbent operators to continue serving the public on their existing spectrum assignments with reasonable opportunities for expansion.

Accordingly, the Coalition proposes a pre-auction, channel-by-channel, EA-by-EA settlement process for the lower 230 channels. EA auctions would occur only after existing incumbent licensees on the lower 230 channels, including retunees from the upper 200 channels, have had an opportunity to "settle" their channels as follows: if there is a single licensee on the channel within the EA, it would apply to the Commission and be awarded an EA license. If there are several licensees on a single channel within the EA, they would receive a single EA license for that channel under any agreed-upon business arrangement, *e.g.*, a partnership, joint venture, or consortia. Non-settling channels in the lower 80 would be auctioned in existing five-channel blocks; those in the 150 channels would be auctioned in three 50-channel blocks.

EA settlements are fully consistent with the Commission's competitive bidding authority in Section 309(j) of the Communications Act of 1934, as amended, directing the Commission to use threshold eligibility limitations and negotiation to avoid mutually exclusive applications. Settlements would minimize the number of EA blocks requiring auctions, thereby speeding service to

the public. New entrants would not be foreclosed as they could participate in the upper 200 channel EA auctions and the lower 230 auctions for non-settling EAs.

All incumbents should be free to participate in EA settlements and to obtain an EA license either individually or as a settlement group participant. For non-settling EA blocks, the Coalition supports a competitive bidding entrepreneurial set-aside for the lower 80 SMR channels and one of the 50-channel former General Category blocks.

The Coalition believes that the EA settlement process, if adopted, would result in near industry-wide support for EA SMR licensing on all 430 SMR channels, including the general concepts of the Commission's auction and mandatory relocation decisions in the First Report and Order in this docket. The Coalition respectfully requests that the Commission adopt its consensus proposal, as described in detail herein.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144 RM-8117, RM-8030 RM-8029
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding	)	PP Docket No. 93-253

To: The Commission

JOINT REPLY COMMENTS OF SMR WON, THE AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION AND NEXTEL COMMUNICATIONS, INC. ON THE SECOND FURTHER NOTICE OF PROPOSED RULE MAKING

I. INTRODUCTION

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("Commission") and the Second Further Notice Of Proposed Rule Making ("FNPRM") in PR Docket No. 93-144 ("the December 15 Order"),1/ the Coalition of SMR WON, the American Mobile Telecommunications Association ("AMTA") and Nextel Communications, Inc. ("Nextel") (collectively the "Coalition")

1/ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, FCC 95-501, released December 15, 1995. On January 11, 1996, the Commission extended the Comment deadline from January 16 to February 15, and the Reply Comment deadline from January 25 to March 1, 1996. Public Notice, DA 96-2, released January 11, 1996.

respectfully submit Reply Comments in the above-referenced proceeding.2/

SMR WON is a trade association of small business Specialized Mobile Radio ("SMR") incumbents operating in the 800 MHz band. AMTA is a "nationwide, non-profit trade association," representing the interests of specialized wireless interests including SMR licensees. Nextel is the largest provider of SMR services in the Nation, and all members of the Coalition are active participants in this proceeding.

After reviewing the approximately 36 comments filed herein, the Coalition found widespread industry consensus on the following issues:

> (1) The Commission should adopt a pre-auction, channel-by-channel, Economic Area ("EA")-by-Economic Area, settlement process for the lower 230 channels.3/
>
> (2) Mutually exclusive applications in EAs that do not settle should be chosen through the auction of five-channel blocks on the lower 80 SMR channels and three 50-channel blocks on the 150 former General Category channels.

2/ The Coalition supports the industry's consensus proposal, as set forth in their individual comments and the comments of the Personal Communications Industry Association ("PCIA"), E.F. Johnson ("EFJ"), Pittencrieff Communications, Inc. ("PCI") and the U.S. Sugar Corporation ("U.S. Sugar"). Each member of the Coalition may submit individual Reply Comments, consistent with the positions taken herein.

3/ All incumbents on the lower 230 channels could participate in EA settlements and receive an EA license individually or as part of a settlement group. The participants in each EA settlement negotiation would be determined by whether their base station coordinates are located within the EA. In the case of certain channels which do not settle on an EA basis, the Coalition supports a competitive bidding entrepreneurial set-aside, as discussed below.

(3) When coupled with the EA settlement process, there is consensus for designating one 50-channel block and the 80 SMR channels as an entrepreneurial set aside, thus permitting anyone to participate in the auction of the two 50-channel former General Category blocks.4/

(4) The Commission should encourage a cost sharing/cooperative arrangement among the upper 200-channel auction winners during the retuning process.

(5) Baseline requirements for achieving "comparable facilities" in the retuning process are delineated herein.

(6) There is industry support for the general concepts of the upper 200-channel auction and mandatory retuning/relocation process if coupled with the industry's proposed lower channel settlement process.

II. DISCUSSION

A. THE LOWER 80 AND 150 CHANNELS

1. The Comments Revealed Substantial Industry-Wide Support For A Pre-Auction, Channel-By-Channel Settlement Process On The Lower 230 Channels

The Coalition members each proposed a pre-auction settlement process designed to simplify the transition from site-by-site licensing to EA licensing, increase the value of the lower channels, prevent mutual exclusivity, and permit incumbents to continue developing their existing systems. The settlement process is necessary since, over the past "two decades of intensive development," the extensive shared use of the 150 former General

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4/ The Coalition supports the Commission's decision to reclassify the 150 General Category channels as prospectively SMR only.

Category channels, in particular, has resulted in a "mosaic of overlapping coverage contours. . ."5/

Unlike the upper 200 channels, wherein each license was granted for five to 20 channels, the lower 150 channels were licensed on an individual basis often for shared use. This licensing "hodgepodge" makes the lower channels most useful to licensees already operating thereon, including the retuned/relocated upper 200 channel incumbents.

The Coalition, as well as E.F. Johnson, PCIA, Pittencrieff Communications, Inc. and the U.S. Sugar Corporation expressly support pre-auction EA settlements as follows: if there is a single licensee on the channel throughout the EA, it would have the right to apply for and be awarded an EA license. If there are several licensees on a single channel throughout the EA, they would receive a single EA license for that channel under any agreed-upon business arrangement, e.g., a partnership, joint venture, or consortia.6/ The Coalition's proposed EA settlement process, therefore, would eliminate mutual exclusivity for the "settled"

5/ *See* Comments of AMTA at p. 19. Given the Commission's decision in the First Report and Order to re-categorize the 150 former General Category channels as SMR channels prospectively, and its proposal to license them on an EA basis through auctions, the Commission appears to have eliminated the conventional channel classification. These channels should be prospectively available for trunked use.

6/ AMTA at p. 10; EFJ at p. 8; PCIA at p. 17; PCI at pp. 8-9; SMR WON at pp. 9-11; and U.S. Sugar at p. 13. The Coalition does not fundamentally disagree with the partial EA settlement process outlined in the Comments of SMR WON. *See* SMR WON at p. 10.

channel and make it unnecessary to use competitive bidding licensing procedures.

While not expressly addressing the above proposal, the City of Coral Gables, Florida ("Coral Gables"), Entergy Services, Inc. ("Entergy"), and Fresno Mobile Radio, Inc. ("Fresno") recognize the necessity of a pre-auction settlement. Each highlighted the complexities and limited utility of auctioning spectrum that is, as Coral Gables described it, an "overcrowded hodgepodge."7/ A pre-auction EA settlement would remedy their concerns.

UTC, the Telecommunications Association ("UTC") stated that public utilities, pipeline companies and public safety entities are legally foreclosed from using their financial resources for competitive bidding since they do not use the spectrum to generate revenues.8/ Many are funded by states, localities and municipalities, or citizen ratepayers, which limits their authority to engage in auctions.9/ Pre-auction settlements would assure that public utilities and public safety organizations can participate in EA licensing of the lower channels instead of relegating them to continued site-by-site licensing, thereby precluding their expansion while the rest of the industry moves to

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7/ Coral Gables at p. 6 (lower 230 channels are such an "overcrowded hodgepodge" that, without the settlement of as many channels as possible, whoever wins the auction would "owe so much protection to so many incumbents over so much of the market" that the geographic license will be of little value to the winner). *See also* Entergy at pp. 8-9; Fresno at p. 23.

8/ UTC at p. 13.

9/ Id.

geographic-based licensing. While the Coalition agrees that these hurdles are solved by retuning/relocation on the upper 200 channels, the Coalition also supports the Commission's tentative conclusion that such retuning/relocation is not feasible on the lower channels.

2. Pre-Auction Settlements Comply With Section 309(j) Of The Communications Act of 1934

Permitting pre-auction EA settlements fully complies with the competitive bidding provisions of Section 309(j) of the Communications Act of 1934 ("Communications Act").10/ In fact, it would expressly carry out the Commission's duty to take necessary measures, in the public interest, to avoid mutual exclusivity. Section 309(j)(6)(E) requires that the Commission "use . . . negotiation, threshold qualifications, . . . and other means in order to avoid mutual exclusivity in application and licensing proceedings."11/ The settlement proposal is just that: a threshold qualification/eligibility limitation and a Commission-endorsed negotiation process that establishes a regulatory framework to avoid mutually exclusive applications for EA licenses on the lower 230 SMR channels.

Section 309(j) of the Act authorizes the Commission to select among mutually exclusive applications for radio licenses. At various times, and to further different public policy objectives, Congress has instructed the Commission to select such applications

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10/ 47 U.S.C. Section 309(j).

11/ 47 U.S.C. Section 309(j)(6)(E).

through comparative hearings, random selection procedures and, most recently, competitive bidding. These assignment processes are unnecessary, however, if the applicants can avoid mutually exclusive applications. Granting a single channel EA license to settling incumbents on the lower 230 SMR channels is fully consistent with the Commission's Section 309(j) competitive bidding authority because it fulfills Section 309(j)(6)(E), as explained above, by establishing a mechanism to avoid mutual exclusivity. Permitting pre-auction EA settlements would facilitate the expeditious transition of lower SMR channel incumbents from site-by-site to EA licensing wherever possible, with auctions used only for EA licensees where mutual exclusivity persists.

Moreover, adopting a threshold eligibility limitation to promote pre-auction, channel-by-channel EA settlements among incumbents (including retunees) is in the public interest because (1) the spectrum is heavily licensed, most often on a channel-by-channel or shared-used basis, and is therefore of little value to non-incumbents; (2) it would speed licensing and delivery of new services to the public;12/ and (3) it would not foreclose new entrants from the SMR industry. New entrants could still bid on

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12/ PCIA requests that the Commission postpone the lower channel licensing until the construction deadlines for all incumbent systems have passed. PCIA at p. 18. The Coalition disagrees. This would delay the ability of numerous SMR providers to obtain geographic area licenses, thereby slowing the provision of new services to the public. These delays are not justified by PCIA's speculation that channels may become available after construction deadlines lapse. If an incumbent fails to timely construct a station, those channels should revert automatically to the EA licensee(s) for those channels.

lower channel EA licenses that do not settle, or the upper 200-channel EAs, and they could participate through mergers, partnerships and/or buyouts of existing SMR companies.

Further, the EA settlement process is necessary to transition the lower channels to geographic licensing in light of existing incumbent operations. Unlike the upper 200 channels, where the Commission has ~~properly recognized~~ DETERMINED that incumbents can ~~and would~~ be relocated to permit EA licensees to introduce new technologies and services requiring contiguous spectrum, there is no possibility of retuning incumbents from the lower channels. Given this, the EA settlement proposal affords a mechanism to incorporate the existing and future operations of lower channel incumbents -- taking into account shared authorizations and the non-contiguous lower 80 SMR channels -- within the transition to geographic area licensing. Additionally, the EA settlement process will assist the voluntary retuning from the upper 200 channels by providing retuned incumbents access to geographic-based licenses.

There is sound Commission precedent for limiting lower channel EA settlements to incumbent carriers. The Commission granted initial cellular licenses on a geographic basis with two blocks in each area. Eligibility on one block was limited to wireline telephone companies to assure telephone company cellular participation.13/ If the local telephone companies were unable

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13/ Under state regulation at the time, local telephone companies had defined monopoly service areas, thereby limiting the number of telephone company eligibles in each cellular licensing area.

to settle, the Commission granted the license by lottery, pursuant to its then-existing licensing authority under Section 309(j).14/ In many cases, the incumbent telephone companies did settle, avoiding random selection, and the licensee speedily initiated new service to consumers.15/

The proposed lower channel EA settlement process is comparable to initial cellular licensing, albeit the unresolved mutually exclusive incumbent applications would be chosen by auction rather than lottery. There are compelling, public interest justifications for limiting pre-auction lower-channel SMR settlements to incumbents, as discussed above, just as there was for the cellular wireline set-aside. If the SMR incumbents do not settle, then the EA license would be subject to mutually exclusive applications and auctioned, just as mutually exclusive cellular applications were subject to a lottery. In fact, the proposed EA settlement process is more inclusive than was cellular licensing since any applicant (or at least any small business) could bid on unsettled EAs; only telephone companies in the geographic area could apply for the cellular wireline license.

14/ Cellular Lottery Decision, 98 FCC 2d 175 (1984).

15/ The Commission recently proposed a similar eligibility limitation in its Advanced Television ("ATV") licensing proceeding. Therein the Commission proposed to limit eligibility by allowing incumbent broadcasters to "have the first opportunity to acquire ATV channels." Fourth Notice Of Proposed Rule Making and Third Notice of Inquiry, MM Docket No. 87-268, 10 FCC Rcd 10540 (1995) at para. 25.

3. The Commission's Proposed Set-Aside

A number of parties opposed the Commission's proposal to set aside all lower 230 channels as an entrepreneur's block.16/ They assert that an entrepreneurial set-aside could prevent lower channel incumbents from bidding on the very spectrum on which they are operating and serving the public today since many incumbents would not meet the proposed small business revenue ceilings.

The Coalition agrees that denying incumbents the right to participate in the auction not only precludes their ability to expand and potentially enhance their operations, but it also denies them the ability to protect their existing operations while others could essentially "land-lock" them by obtaining the EA license. EA settlements would enable these incumbents to continue offering services and to grow their businesses.

Other commenters supported the entrepreneurial set-aside concept because it would provide specific opportunities for small SMR businesses,17/ and the Coalition has agreed to support an

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16/ UTC at p. 14 (set aside "further compound[s] the unfairness of the reallocation of the channels for commercial service" because most public utilities and pipeline companies have gross annual revenues far above any proposed "small business" limitation); PCI at p. 11 (opposed to an entrepreneur's block that applies the financial criteria to incumbents); Entergy at p. 11 (denies large incumbents, *i.e.*, all utilities and pipeline companies, the ability to bid on the very license on which they are now operating, thereby denying them the right to protect their assets); Tellecellular de Puerto Rico, Inc. ("Tellecellular") at p. 1; Southern Company at p. 16 ("prevents some incumbents who desire to retain their channels from participating in the auctions"); and EFJ at p. 9 ("fundamentally unfair to prohibit entities from participating in such an auction if they already hold channels in an EA.")

17/ See, e.g., Fresno at pp. 28-29; SMR WON at p. 24.

entrepreneurial set-aside limited to the lower 80 channels and one of the 50-channel blocks in conjunction with Commission adoption of the industry EA settlement proposal described above. The set-aside would apply only to eligibility to bid on lower 230 channels which are not settled among the existing incumbents (including retunees) and which therefore must be licensed through competitive bidding. All lower 230 channel incumbents would be eligible to participate in the pre-auction EA settlement process and to receive EA licenses either individually or as part of a settlement group.

B. THE UPPER 200 CHANNELS

As noted above, many industry participants will support the general concepts of the Commission's upper 200 SMR channel EA licensing auction and relocation decisions, as set forth in the First Report and Order, if the Commission adopts the pre-auction EA settlement process for the lower 230 SMR channels discussed herein. A consensus of commenters assert that these approaches, taken together, reasonably balance the needs of all SMR providers and will facilitate a more competitive SMR/CMRS industry. This includes relocation of upper 200-channel incumbents to the lower channels where they would become incumbents with the right to negotiate and settle out their channels to obtain EA licenses.

There are, however, a few aspects of the relocation process that warrant further discussion: (1) cost sharing/cooperation among EA licensees; (2) using Alternative Dispute Resolution

("ADR") to resolve relocation disputes; and (3) the specifics of determining "comparable facilities" and "actual costs."18/

1. Cost Sharing/Cooperation Among EA Licensees

Several commenters supported the Commission's proposed cost sharing plan for EA licensees and the requirement that EA licensees collectively negotiate with the affected incumbents.19/ Such collective negotiations, they argued, would "facilitate the relocation process.20/

The Coalition and other commenters agree that an EA licensee should not be able to delay or stop the relocation process for all affected EA licensees because it cannot or does not desire to retune/relocate an incumbent. Both AMTA and PCI proposed that those EA licensees who choose to retune/relocate an incumbent should be permitted to retune/relocate the entire system -- even those channels located in a non-participating EA licensee's block.21/ This would prevent a situation where, for example, Licensee A, is not interested in retuning the channels of an

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18/ There was significant agreement among commenters that partitioning and disaggregation should be permitted on the upper 200 channel blocks. *See* AMTA at p. 8; EFJ at p. 3; Genesee Business Radio Systems, Inc. at p. 2; Sierra Electronics at p. 1; and PCIA at p. 23. Only one party voiced opposition to either proposal. *See* Fresno at p. 3 (sublicensing should not be permitted due to the complexities it could create).

19/ *See, e.g.*, AMTA at p. 11; Fresno at p. 15; PCI at p. 5; Digital Radio at p. 3; and Industrial Telecommunications Association ("ITA") at p. 11.

20/ Digital Radio at p. 3; SMR Systems, Inc. ("SSI") at p. 3; UTC at p. 7.

21/ AMTA at p. 11.

incumbent within its channel block. Licensee B and Licensee C, on the other hand, who also have a portion of the incumbent's system in their blocks, want to retune/relocate that same incumbent.22/ Without some preventive mechanism, Licensee A's refusal to retune/relocate could result in no relocation by anyone since the incumbent's entire system must be relocated.

Licensees B and C, therefore, should be permitted to relocate the incumbent's entire system by offering the incumbent their channels in the lower 80 or the 150 to account for the channel(s) in Licensee A's block. After the retuning/relocation is complete, Licensees B and C, who retuned the incumbent off Licensee A's channels, would "succeed to all rights held by the incumbent vis-a-vis" Licensee A.23/ Without this flexibility, relocation could be unnecessarily delayed and protracted.24/

2. Alternative Dispute Resolution

The comments exhibited mixed reactions to the Commission's proposal to employ ADR during the relocation process. The Coalition believes that a properly-designed ADR system can meet all concerns. It is imperative -- as AMTA pointed out -- that there be several arbitration choices.25/ No arbiter should be used unless all parties agree. Moreover, all ADR decisions must be

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22/ Or perhaps the 20-channel block licensee does not have lower 80 and 150 channels suitable for retuning that particular incumbent.

23/ *Id.* *See also* Comments of Nextel at pp. 18-20; PCI at 5.

24/ Nextel at p. 18.

25/ AMTA at p. 14; Nextel at p. 23.

appealable to the Commission and other appropriate agencies, and all ADR costs should be resolved by the arbiter as part of the ADR process.26/

3. Comparable Facilities

Most of the industry agrees that "comparable facilities" generally require that "a system will perform tomorrow at least as well as it did yesterday."27/ There was significant agreement that comparable facilities must include (1) the same number of channels, (2) relocation of the entire system, and (3) the same 40 dBu contour as the original system.28/

Critical to the definition of comparable facilities is the definition of a "system," which should be defined as a base station or stations and those mobiles that regularly operate on those stations. A base station would be considered located in the EA specified by its coordinates, notwithstanding the fact that its service area may include adjacent geographic EAs.29/ A multiple base station system, by definition, could encompass multiple EAs.

26/ *Id.*

27/ *See* AMTA at p. 15.

28/ AMTA at p. 15; Digital Radio at p. 6; EFJ at p. 5; GP and Partners at p. 3; Industrial Communications and Electronics at p. 7; SSI at p. 7; and UTC at p. 9.

29/ *See* Nextel at p. 22. *See also* AMTA at p. 16 ("system" includes "any base station facility(s) which are utilized by mobiles on an inter-related basis, and the mobiles that operate on them."); PCI at p. 7 ("system" should be limited to those mobile units that regularly operate only on those base stations within the EA licensee's EA.)

One commenter, Centennial Telecommunications, Inc. ("CTI"), suggests that a "system" should be defined as all frequencies that are part of a licensee's wide-area system, including those at unconstructed sites and sites licensed to other, unaffiliated, parties.30/ CTI's proposal is illogical, unreasonably expansive and absurd. It would potentially require the retuning of sites/stations that are unconstructed, not affiliated or interoperable with the retunee's system.

III. CONCLUSION

The Coalition supports the Commission's tentative conclusion to license the lower 230 SMR channels on a geographic area basis. To simplify the transition from site-by-site licensing, speed the licensing process, and avoid mutually exclusive applications, the Commission should adopt the industry's pre-auction EA settlement process for the lower channels. The threshold eligibility limitations and the other modifications discussed herein, in combination with the rules adopted in the First Report and Order and the Eighth Report and Order, strike a fair balance for all existing and future SMR providers to transition to geographic-area based licensing and more efficient spectrum use. This will further

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30/ CTI at p. 6. In fact, in the attachment to CTI's pleading, it suggests that a site owned and operated by Nextel should be retuned as part of CTI's "system." *See* Exhibit A, Comments of CTI. Dial Call, Inc., listed thereon, is a wholly owned subsidiary of Nextel.

fulfill the Commission's regulatory parity mandate and promote competition among all CMRS competitors.

Respectfully submitted,

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Dated: March 1, 1996

800 MHz SMR Industry Consensus Proposal
(PR Docket No. 93-144)

Background

The Coalition, including, but not limited to, SMR WON, the American Mobile Telecommunications Association, Inc. (AMTA), the Personal Communications Industry Association (PCIA) and Nextel Communications, Inc., represents a large majority of 800 MHz SMR operators of all sizes, including local analog dispatch operators as well as wide-area licensees seeking to implement regional or nationwide digital CMRS systems. Further, the Coalition consensus position represents agreement for the first time among parties that have long had sharp differences on the issues in this proceeding. The Coalition respectfully submits that approval of its position would result in near-unanimous industry support for EA-based licensing of all 430 SMR channels in this band, as well as for auctions and the Commission's decision to permit mandatory retuning/relocation of upper-band incumbents.

1. The Coalition supports adoption of rules governing geographic-based licensing of the remaining 230 SMR channels in continuity with the Commission's decision to auction the upper 200 channels of the current 800 MHz SMR frequency band.

2. Geographic-area licensing of the lower 230 SMR channels on an EA basis must enable all incumbents, including upper-band retunees/relocatees and non-SMR operators, to continue serving the public with reasonable opportunities for expansion. Therefore, the Coalition advocates a channel-by-channel, EA-by-EA settlement process that will allow all existing licensees, whether SMR operators or private, internal-use systems, to obtain geographic licenses on current channels within a defined time frame. These full-market settlements would avoid mutually exclusive applications for these channels. Auctions would be used to assign channels on which there are no incumbents or as to which no settlement has been reached.

The proposed EA settlement process is fully consistent with the Commission's competitive bidding authority under Section 309(j) of the Communications Act. The FCC has been directed to use threshold eligibility limitations and negotiation to avoid mutually exclusive situations. The proposed settlement, then auction, process would speed transition from cumbersome site-specific licensing; it would promote rapid service to the public, and it would allow new entrants to obtain licenses on channels not already assigned to incumbents.

3. In defining "comparable facilities" for purposes of retuning/relocating upper-band incumbents, the FCC should require that a retuned system "perform tomorrow at least as well as it did yesterday." Retuning/relocation should provide the same